IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16134 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KETANBHAI BHANJIBHAI DABHI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 16134 of 2003

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MS. PAURAMI SHETH, LD. AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 04/03/2004

ORAL JUDGEMENT

1. Ms. Paurami Sheth, learned AGP has placed on record the affidavit in reply filed by respondent No.1, same is kept on record.

2. Heard Mr. Kamlesh Kachhavah, learned advocate for the petitioner and Ms. Paurami Sheth,learned AGP for the respondent.

3. By this petition under Article 226 of the Constitution of India, the petitioner has been challenging the order of detention No: PCB/PASA/171/2003 dated 5-9-2003 (Annexure-A) passed by Respondent No.1 under section 3 of the Gujarat Prevention of Anti Social Activities Act 1985. (Hereinafter referred to 'PASA Act') and prays for quashing aside the said detention order and setting the petitioner at liberty.

4. The grounds of detention Annexure-B suggests five cases under the provisions of section 379 and 114 I.P. Code came to be registered against the petitioner detenu on different dates. All these cases related to theft of TVS Scooty and two wheelers. In the grounds of detention the statements of witnesses relating to the incident dated 29-6-2003 and 3-8-2003 respectively have been referred to. The petitioner, for the purpose of passing the impugned detention order has been branded as 'dangerous person, having been involved in number of cases under the provisions of I.P. Code.

5. The privilege under section 9 (2) of PASA Act has been invoked withholding the identity of the witnesses who gave the statements in unregistered cases.

6. Challenging the order of detention it is submitted by learned advocate for the petitioner that, the offence alleged in the registered cases as well as unregistered cases are directed against an individual and that maintenance of public order is not affected at all, it may at the most be a case of maintenance of 'land & order' and not the public order.'

7. It is submitted by learned AGP for the respondent that in the instant case maintenance of public order was adversely affected in as much as the witnesses whose statements have been referred in the grounds of detention revealed that the witnesses refusing to abide by what the detenu and his associates told them, they were subjected to beating. The witnesses raised crises whereupon the persons from the area collected to rescue the witnesses; that the petitioner and his associates started beating the people who were trying to rescue the witnesses and

because of the sudden attack the people out of fear started running away, leaving their vehicles at the place of incident which led to obstruction to the maintenance of public order as the witnesses and the people were subjected to beating with chain etc. and an atmosphere of panic and danger was created with the result people closed down their business and to save themselves went inside their houses which led to the disruption in the daily transactions and it was only after the witnesses apologized to the petitioner, they were freed. In the submission of learned AGP all these are indicative of public order having been adversely affected. As far as the registered cases and two unregistered cases are concerned, the incidents alleged are the offences under the provisions of I.P. Code namely section 379 and 114 I.P. Code and under section 323 and 114 of I.P. Code respectively.

8. As far as the registered cases and the statements of witnesses of unregistered cases of the offences under provisions of I.P. Code are concerned, in the case of ASHOK JIVRAJ @ JIVABHAI SOLANKI Vs. POLICE COMMISSIONER, SURAT & ORS. XLI (1) GLR, pg. 816 it has been observed by the Division Bench that " four cases registered against the detenu under IPC looking to the incidents the case falls under the maintenance of "Law & Order" and not "Public Order." Therefore, subjective satisfaction arrived by the detaining authority cannot be said to be legal or valid and the order of detention could have been passed on the ground of maintenance of "Public Order", detention order quashed. "

In the instant case, offences registered against the petitioner are under section 329, 114 and 323, 114 of I.P. Code. As far as the unregistered cases are concerned all what has been suggested from the statements recorded in the grounds of detention is that the witnesses refusing to abide by what the detenu and his associats told them, they were sujected to beating. Thus the offences alleged in unregistered case also are falling under I.P. Code.

9. It is submitted by Ms. Paurami Sheth, learned AGP that the statement of witnesses in unregistered cases suggests that the maintenance of public order was adversely affected in as much as on petitioner beating the witnesses with chain etc. the people collected and his associates ran after those persons who had come to rescue the witnesses which led to commotion and people started running away leaving their vehicles and were also required to close their business and confined to their

houses closing the doors and windows of their respective houses. In the submission of MS. Sheth this suggests maintenance of public order having been adversely affected.

In the case of MUSTAKMIYA JABBARMIYA SHAIKH Vs. M.M. MEHTA, COMMISSIONER OF POLICE & ORS, 36 (2) GLR pg. 1268 the Supreme Court in para-7 observed as follows :-

" Para-7. The Preamble of the Act makes it clear that the object of provisions contained in the Act is to prevent the crime and to protect the society from anti-social elements and dangerous characters against perpetration of crime by placing them under detention for such a duration as would disable them from resorting to undesirable criminal activities. The provisions of the Act are intended to deal with habitual criminals, dangerous and desperate outlaws who are so hardened and incorrigible that the ordinary provisions of penal laws and the mortal fear of punishment for crime are not sufficient deterrents for them. Sec. 3 of the PASA Act is, therefore, intended to deal with such criminals who cannot readily be apprehended to be booked under the ordinary law and who for special reasons, cannot be convicted under the penal laws in respect of the offences alleged to have been perpetrated by them. But this power under the Act to detain a person should be exercised with restraint and great caution. In order to pass an order of detention under the Act against any person the detaining authority must be satisfied that he is a "dangerous person" within the meaning of Sec. 2(c) of the PASA Act who habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Penal Code or any of the offences punishable under Chapter V of the Arms Act as according to sub-sec. (4) of Sec. 3 of the Act it is such "dangerous person" who for the purpose of Sec. 3 shall be deemed to be a person "acting in any manner prejudicial to the maintenance of public order" against whom an order of detention may lawfully be made. "

In para-8 the Supreme Court observed as follows:-

" Para-8. The Act has defined "dangerous person" in clause (c) of Sec. 2 to mean a person who

either by himself or as a member or leader of a gang habitually commits or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI of Chapter XVII of the Penal Code or any of the offences punishable under Chapter V of the Arms Act. The expression 'habitual' has, however, not been defined under the Act. It does not refer to the frequency of the occasions but to the invariability of practice and the habit has to be proved by totality of facts. It, therefore, fellows that the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that a particular person is a "dangerous person" unless there is material suggesting his complicity in such cases which lead to a reasonable conclusion that the person is a habitual criminal. It, therefore, necessarily follows, that in order to bring a person within the expression "dangerous person" as defined in clause (c) of Sec. 2 of the Act, there should be positive material to indicate that such person is habitually committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or Chapter XVII of I.P.C. or under Chapter V of the Arms Act and that a single or isolated act falling under Chapter XVI or Chapter XVII of I.P.C. or Chapter V of the Arms Act cannot be characterised as a habitual act referred to in Sec. 2 (c) of the PASA Act.

In para-9 Supreme Court has observed as follows:-

" Para-9. Sub-sec (4) of Sec. 3 also provides that for the purpose of Sec. 3, a person shall be deemed to be 'acting in any manner prejudicial to the maintenance of public order' when such person is a "dangerous person" and engaged in activities which affect adversely or are likely to affect adversely the maintenance of public order. It, therefore, becomes necessary to determine whether besides the person being a "dangerous person" his alleged activities fall within the ambit of the expression 'public order'. A distinction has to be drawn between law and order and maintenance of public order because most often the two expressions are confused and detention orders are passed by the authorities concerned in respect of the

activities of a person which exclusively fall within the domain of law and order and which have nothing to do with the maintenance of public order. "

10. In the above legal position, the impugned detention order cannot be sustained, since the same cannot be said to be for the maintenance of 'public order' and the acts alleged being against the individuals the same would at the most relate to the maintenance of 'law & order' and therefore section 3 of the PASA Act could not have been invoked by the respondent for the purpose of passing the detention order. Under the circumstances the impugned detention order is liable to be quashed and set aside.

11. In the result, the petition is granted and accordingly allowed. The impugned detention order No: PCB/PASA/171/2003 dated 5-9-2003 (Annexure-A) passed under the Prevention of Anti Social Activities Act, 1985 by Respondent no.1 is quashed and set aside. The petitioner detenu - Ketanbahi Bhanjibhai Dabhi is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service permitted.

Dt: 4-3-2004 (N.G. Nandi, J)

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